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B. R. Parkinson v. Ed H. Watson : Brief of Respondents

Utah Supreme Court

J. Lambert Gibson; Richard C. Howe; A. W. Sandack; Attorneys for Respondents;

In the Supreme Court

of the State of Utah

B. R. PARKINSON, et al.,
Plaintiffs-Appellants,

vs.

ED H. WATSON, et al.,
Defendants-Respondents.

Case No. 8407

BRIEF OF RESPONDENTS

J. LAMBERT GIBSON
RICHARD C. HOWE
A. W. SANDACK
Attorneys for Respondents

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STATEMENT OF FACTS

Respondents have no quarrel with appellants' statement of facts except respondents contend much of the statement immaterial to the issue.

INTRODUCTION

The question before this court is but one facet of a much larger question. Important as it is to the people

of the State of Utah, its far greater importance lies in its impact on future National, State and Municipal relationships. Appellants and respondents, both here and in the court below, have approached the solution of this problem from a non-political point of view. For introduction and background, we quote from "The Commission on Intergovernmental Relations." — A report to the President for Transmittal to the Congress" printed June, 1955. Commencing on page 36:

> "The success of our federal system thus depends in large measure upon the performance of the States. They have the primary responsibility for all government below the National level. The States and their subdivisions bear directly more than two-thirds of the growing fiscal burdens of domestic government. In recent years their activities have been increasing faster than the nondefense activities of the National Government.
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> * * *
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> "The strengthening of State and local governments is essentially a task for the States themselves. Thomas Jefferson observed that the only way in which the States can erect a barrier against the extension of National power into areas within their proper sphere is "to strenghten the State governments, and as this cannot be done by any change in the Federal constitution * * * it must be done by the States themselves * * *. He explained: "The only barrier in their power is a

wise government. A weak one will lose ground in every contest.

* * *

"In the early history of our country, State legislatures were the most powerful and influential instrument of government in the Nation. It was to them that the average citizen looked primarily for initiative and wisdom in the formulation of public policy on domestic issues. They overshadowed the other branches of State government. In power and influence they are no longer as dominent as they were, partly because of the ascendancy of the National Government, partly because of the increased influence of the State executive, but primarily because they have not found effective solutions to problems that become more chronic and more difficult to cope with in a rapidly changing society.

Importance of Reapportionment

"One of these problems is to maintain an equitable system of representation. In a majority of States, city dwellers out number the citizens of rural areas. Yet in most States, the rural voters are overwhelmingly in control of one legislative house, and overweighted if not dominant in the other.

"In a majority of State constitutions, population is the sole or principal basis of representa-

tion in both houses. But this basis is in many cases modified, at least for one house, by provision for a certain minimum or maximum number of representatives per county or other district. As cities have grown more rapidly than rural areas, these systems of apportionment have tended to create an increasing imbalance in legislative representation in favor of rural areas.

"The constitutions of 43 States call for some reapportionment in at least one house as often as every 10 years. In nearly half of these States, reapportionment lags behind schedule. Ten States provide for reapportionment of one or both houses by some agency other than the legislature, either initially or in case the legislature fails to act. In these States, some reapportionment takes place on schedule — a fact worthy of study by States whose legislatures have been reluctant to obey the constitutional mandate to reapportion themselves.

"Revising an outmoded pattern of representation is, to be sure, a difficult act for a legislative body, each of whose members has a vested interest in the status quo. Many States would need a constitutional amendment to redistrict, for at least one house, as well as legislation to carry out the constitutional intent of periodic reapportionment. Since both require action by the legislature, except in States where they may be

initiated by petition, a heavy premium is placed upon the farsightedness of legislators and upon the willingness of citizens to reconcile their special interests with the general good.

"Reapportionment should not be thought of solely in terms of a conflict of interests between urban and rural areas. In the long run, the interests of all in an equitable system of representation that will strengthen State government is far more important than any temporary advantage to an area enjoying overrepresentation.

"The problem of reapportionment is important in the area of study of this Commission because legislative neglect of urban communities has led more and more people to look to Washington for more and more of the services and controls they desire. One of the study reports prepared for the Commission makes this very clear:

> "If states do not give cities their rightful allocation of seats in the legislature, the tendency will be toward direct Federal-municipal dealings. These began in earnest in the early days of the depression. There is only one way to avoid this in the future. It is for the states to take an interest in urban problems, in metropolitan government, in city needs. If they do not do this, the cities will find a path to Washington as they did before, and this time it may be permanent, with the ultimate result that there may be a new government arrangement that will

break down the constitutional pattern which has worked so well up to now.'

"One result of State neglect of the reapportionment problem is that urban governments have bypassed the States and made direct cooperative arrangements with the National Government in such fields as housing and urban development, airports, and defense community facilities. Although necessary in some cases, the multiplication of National-local relationships tends to weaken the State's proper control over its own policies and its authority over its own political subdivisions."

STATEMENT OF POINTS

POINT I

THE DOUBLE RATIO PROVIDED IN CHAP. 61, LAWS UTAH 1955, IS VIOLATIVE OF THE UTAH CONSTITUTION.

POINT II

CHAP. 61, LAWS UTAH 1955, IS ARBITRARY, CAPRICIOUS AND AN ABUSE OF LEGISLATIVE DISCRETION.

POINT III

THE 1931 REAPPORTIONMENT ACT IS MORE REASONABLE AND LESS OFFENSIVE THAN THE PRESENT (1955) ACT.

POINT IV

REQUEST FOR DIRECTIONS IF THE COURT FINDS THE ACT TO BE CONSTITUTIONAL.

ARGUMENT

POINT I

THE DOUBLE RATIO PROVIDED IN CHAP. 61, LAWS OF UTAH 1955, IS VIOLATIVE OF THE UTAH CONSTITUTION.

The interpretation of constitutional provisions regarding Legislative Apportionment must all be based upon the historical background at the time of the constitutional conventions, and the rules made at such constitutional conventions. It is well known historical fact that one of the major causes of the revolution in England was the "rotten borough system" in that some areas of England were represented in Parliament without equivalent population. This condition existed for many years and finally culminated in the uprising of Cromwell and the complete revamping of the English representative system to a strictly population basis. Pursuant to the historical background, nearly all States of the Union, in setting up their Constitutions, provided in some manner that representation should be on a population basis, with certain modifications thereof. Many Constitutions provide specifically that each senatorial district shall be as nearly equal in size as every other senatorial district. The statement to the general rule in this regard is found in 2 A.L.R. at page 1337, as follows:

> "The principal of equality of representation lies with the foundation of representative government, and requires that no voter shall exercise, in the selection of the legislature, a greater voting power than other voters. It is, therefore, a usual constitutional requirement that representative districts shall be equal in population as nearly

as possible. In practice, however, this principle is qualified by the impracticability of mathematical exactness, by the desirability of providing for local representation, which finds expression in constitutional provisions preserving the integrity and requiring the contiguity of territorial units in laying out representative district, and by various other constitutional provisions, such as those requiring convenience and compactness to be taken into consideration."

The founding fathers of the State of Utah did not use quite the same language as is expressed in the quote from A.L.R. above. The meaning, however, is identical. The Constitution states in Article IX, Sec. 2:

> "The Legislature shall provide by law for an enumeration of the inhabitants of the State, A.D., 1905, and every tenth year thereafter, and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for senators and representatives on the basis of such enumeration, according to ratios to be fixed by law."

Appellants' contention that equality of representation *is not required* by the constitution is answered by the constitutional provision which mandates a reapportionment following each federal and state enumeration of population. If inequality of representation was intended, certainly the founding fathers would not have required the adjustment following each such population enumeration.

In discussing the basis of such apportionment, the Constitutional Convention of the State of Utah spent a

great deal of time in arriving at what in its opinion was the most fair and equitable manner of chosing representatives to our Utah State Legislature. The main part of the discussion begins on page 824 of the proceedings of the Constitutional Convention and continues to page 865. The entire dispute at the Constitutional Convention was not whether the Senators should be elected strictly according to population, but whether the same theory should carry over so that the House of Representatives should also be elected strictly according to population. The final culmination of the debate was to leave the Senate on a strictly population basis and to provide the modification of that theory in regard to the House of Representatives, by permitting each County at least one Representative in the House. The following are some of the quotes from the speeches which were given on the debate to put the House of Representatives on a purely population basis. On page 826, Mr. Hart stated, in opposition to each County having one representative in the House:

> "Population is the principle if not the only thing that should be taken into consideration in determining representation * * * I don't think that counties, simply because they are counties, should have an extraordinary representation."

Again, on page 827 he says:

> "The first senatorial district has a population of 11,342. The third representative district has a population of 10,000; the fourth senatorial district, which has two senators, has a population of 11,000 to each senator, and so it goes, all through

the list. * * * There is but one true principle upon which representation should be based and that is actual population * * *."

On page 828 Mr. Hammond states:

> "Therefore, I would like to stand up in favor of each county having at least one representative in our Legislature."

On page 830, Mr. Eldredge states:

> "Now, the very first question that was raised in the congress that formulated the Constitution of the United States was the question which came up here. It was what representation should the states have in that congress, and it was moved and carried, one of the first things, each state should have at least one representative. * * * I think it is the same way in our legislative halls, that each county should have the privilege of having a representative in the Legislature. * * *".

A Mr. Varian desired that the one representative per County be not written into the Constitution, but that County representation should also revert to the population basis. The following is the speech which commences on page 831 of the proceedings:

> "I move its adoption. Personally, I entertain the conviction that the principle underlying this apportionment is utterly vicious and wrong, but I also recognize the fact that it is in accordance with the sentiment of a large majority of the house, and to the extent that they have made the apportionment as it appears in the report from the committee, which was unanimous, I believe, I am prepared to defer and bow to the will of that majority. I am using the word majority

now in the sense of a majority of the entire Convention, but I am not prepared to vote for this proposition containing, as it does, not only a vicious principle, in my judgment, but also a provision fixing it for all time, at least until the Constitution shall have been amended. I am willing to accept as the judgment of the house, represented through this very large committee and expressed by its unanimous report, the apportionment for the time at least, and if not the best, and the apportionment should be made upon the principles underlying this scheme, but I fail to see that should be continued. I fail to see why they should tie up the people of this State in the future from changing this system, if they desire to do it. There is incorporated in the article the provision that I seek to strike out and substitute another provision for as follows:

> Provided, in any future apportionment made by the Legislature each county shall be entitled to at least one representative.

"Now, if this shall pass, as it is incorporated here, coming from the committee of the whole, it will make no difference what may be the changes in population. Counties may be practically reduced to such a situation that they will be compelled to abandon or at least ought to be compelled to abandon county government. The representation of the State at large may, for a variety of reason, require changes — a difference in the apportionment, and yet with this prohibition in the Constitution, it will be impossible for the Legislature to do what they ought to do — apportion equally and justly. To my mind, this sort of a scheme is in violation of republican principles. I use the word republican of course in its governmental sense, and not at all in its party

sense. I believe that the whole scheme of representation — the exercise of the functions of government by a thorough representation, is, and ought to be, predicated upon an equal representation of the people. Not the representation of the municipalities, and other quasi municipal corporations as units in the scheme of state government. A county in that sense bears no relation at all to the sovereign state in its connection with the other states of the Union. A county is simply a governmental agency, if you please, adapted in the aid of the purposes of the state government. There is no analogy whatever between the counties of the state and the states of this Union in their several relations to each — no analogy whatever between the counties of the state and the states of this Union in their several relations to each other — no analogy at all in the system provided for under the Constitution of the United States giving an equal representation to sovereign states as distinct empires, units by themselves. And the argument is misleading and far fetched that seeks to draw comparisons between the two classes of cases.

"Under the Constitution of the United States the principle of representation is as I have indicated. Representatives shall be apportioned among the several states according to their representative numbers, counting the whole number of persons in each state, excluding Indians not taxed. When you undertake to make an arbitrary system of apportionment which would give to three hundred people the same power, and a power equal to that given five thousand people, you overturn the system, you invade the great principle underlying it, and to that extent you do not present the republican form of government, and you can readily see that it might be pursued to such

an arbitrary and manifestly unjust extent that on its face it would exhibit the fact that the Constitution or the law representing it was not republican in form. Now, I am not prepared to say that is the case here. It is the principle that arrests my attention. I am not prepared to attack this apportionment scheme for the reason that I have given. I submit to the judgment of those present upon that question, but I protest against incorporating it in the Constitution itself, which will perpetuate it here, sir, until this Constitution shall be amended, and I ask a careful consideration of the matter in order that this amendment may be given the weight which I think it deserves. It simply provides that when a new apportionment shall be made the Legislature shall return to the principle that I have suggested and make such apportionment in accordance with the population. By that you do equal and exact justice everywhere. It does not follow because the county line makes a division between a community or a people who are represented in a Legislature that any rights are lost.

"The right of representation is maintained in all its strictness and in all its purity, if it is equalized, if the equilibrium is preserved throughout the commonwealth as nearly as may be, and every man and every woman and every child entitled to the right of representation is only entitled to that right with respect to the others of the community in the like situation. You will observe if you consider the matter that this amendment does not disturb the equlilibrum of this bill at all. It does not affect anything that you propose to do. It does not affect anything that the committee has passed upon, with relation to the practical question of apportionment among the people. It

simply authorizes the Legislature at some future time, when the occasion shall serve, to change this system in accordance to what I believe at least to be a just and proper principle. If that is done, I can vote for this article. If it is not done, I cannot and will not vote for it, because of my convictions in that particular."

In the debate on this matter, Mr. Roberts stated at page 836:

> "If I understand the substitute offered by Mr. Varian, it does not contemplate disturbing the present apportionment, but merely refusing to confirm for all time — to go in our Constitution, the basis of the present apportionment, in so far that each county must always have a representative in the house of representatives. But, rather assumes that the principle of apportionment guiding the Legislature hereafter shall be that which is based upon the population of the state. I favor, sir, that substitute."

And again, at page 837, Mr. Roberts in discussing the senatorial apportionment and the provisions of the Constitution above quoted, and which is now Section 2 of Article IX, states:

> "Section 2 recognizes no other apportionment than upon a basis of an enumeration of the inhabitants."

The whole argument in the constitutional proceedings is not whether the Senate should be on a strictly population basis which was admitted all through the debate, but whether the House should also be on a strictly

population basis. Quoting from Mr. Thurman as he is quoted in Appellant's brief:

> "It would not require much of a bound upward for Salt Lake City, under statehood, to have a population of one hundred and fifty thousand people, while the counties on the outside might have comparatively but small increase. In that case Salt Lake City alone would control the State of Utah. * * *..

Mr. Thurman was speaking in behalf of each county having at least one representative, and against the House of Representatives being on a population basis. It would have been impossible for Salt Lake City to have controlled the legislature *unless the Senate was already on a population basis.*

Appellants imply that respondents position is the Constitution requires the entire legislature be on a population basis. This is not so. Respondents concede that when the Varian Amendment lost in the constitutional convention that the House of Representatives was irrevocably committed to area representation. Maybe this is as it should be. However, Chapter 61 puts *both* houses on an area basis. This, we oppose. We submit that the so called "rural areas" can always protect themselves by controlling the House of Representatives and can do so within the framework of the Constitution.

Appellants claim much for the fact the word "ratios" as it appears in the constitution is in the plural. We submit the simple answer that the word must be in the plural. There are two ratios, one for the house and

one for the senate. For the word to be in the singular would be grammatically incorrect and would not make sense.

Appellants apparently can find no case squarely in point as to the meaning of our constitutional provision. We confess respondents also cannot. In the only cases where double ratios were used the question was not raised before nor decided by the appellate court. The case closest to being in point is *Armstrong* v. *Mitten et al,* 37 P. 2nd 757. In this case an act using double ratios was passed by initiative measure. The legislature met and passed another act and the question of legislative act as it affected the initiative act was before the court, which held:

> "The legislative act attempt to confer upon some district a representation that is greater, and upon others a representation that is less than they are entitled to under the Constitution. A glance at the senatorial districts reveals the following situation: According to the census and established ratio, the Denver district is entitled to eight senators. The legislative act gives it only seven senators, thereby depriving it of one senator, in plain violation of the Constitution. Rio Grande, Sagauche, and Mineral Counties are grouped together as the 15th senatorial district; and although their combined population is less than 17,000, the district is given one senator, although it would require the addition of at least one more county to give it a population sufficient to entitle the district to one senator. The same situation exists in the 18th senatorial district, which is given one senator, although the combined

> population of its constituent counties is less than the population sufficient to entitle the district to one senator. And the 21st senatorial district is in precisely the same situation. * * *"

Nowhere in the history of Colorado has its Supreme Court ever passed upon the validity of double ratio, nor has it ever been asked to.

The fact that two previous legislatures (1921-1931) used a single ratio instead of double ratios is persuasive that such was the constitutional intent.

POINT II

CHAPTER 61, LAWS OF UTAH 1955, IS ARBITRARY, CAPRICIOUS AND AN ABUSE OF LEGISLATIVE DISCRETION.

We contend although the Utah Constitution provides that apportionment in the State Senate shall be based upon population, mathematical exactness is not required by the Legislature. The courts seem to hold that minor discrepancies are not vital, but that the apportionment must be as nearly exact as can reasonably be done without dividing Counties, etc. As was stated in the case of *State ex rel Warson vs. Howell,* 92 Wash. 540, 159 P. 777 that where a measure of discretion in making an apportionment is fixed in the Legislature, it must appear that its action partook of an arbitrary disregard of the requirements of the Constition, or was so gross and inconsistant as to imply arbitrary action before it will be declared invalid. And as stated in *Brophy vs. Suffolk County Apportionment Commissioners,* 225 Mass. 124, 113 N. E.

1040: Inequalities alone, are not enough to make void an apportionment. The inequalities must be unnecessary and incompatible with a reasonable effort to conform with the requirements of the Constitution.

Although we are inclined to believe that reapportionment is purely a legislative matter, in the case of *Pickens vs. Board of Apportionment* in 1952, Arkansas case, the Supreme Court of Arkansas, as a culmination of several suits before them on apportionment, proceeded, as a judicial matter, to re-district the State, to make the districts as nearly equal as might be.

In the case of *Jones v. Freeman,* an Oklahoma case, at 146 P. 2d 564, the court stated the principle of equality of representation lies at the very heart of representative government. This principle was enjoined upon the Legislature by the cited Constitutional provisions. At the ballot box in a representative government, each citizen is supposed to be, and should be, the equal of every other citizen and all are entitled to approximately an equal voice in the enactment of laws through elected representatives. It was not the intention of the framers of the Constitution, nor of the people who adopted it, that ciizens in one County should have representation in the two houses of the Legislature out of all proportion to that enjoyed by the citizens of other Counties.

At this point, may we draw the Court's attention to the fact that Iron County, with a population of 9,642 is given a State Senator. Washington County, with a population of 9,836 is given a State Senator. These two

counties have never previously been separated from each other in senatorial districts and are two contiguous Counties. Whereas, Tooele County, with a population of 14,636 was required to be joined with Juab County in order to obtain a State Senator. Such arbitrary discrimination violates the principle of equality of representation in representative government.

Parenthetically may we call the court's attention to the fact that one of the attorneys for the amicus curiae is the senator from Washington and Iron Counties.

May we draw several other examples of arbitrary and capricious action to the attention of this court.

Using exhibit 1 introduced by appellants below we see that between 1940 and 1950 the following counties lost population:

County	Population 1940	Population 1950
Rich	2,028	1,673
Morgan	2,611	2,519
Summit	8,714	6,745
Wasatch	5,754	5,574
Juab	7,392	5,981
San Pete	16,063	13,891
Emery	7,072	6,304
Grand	2,070	1,903
Sevier	12,112	12,072
Millard	9,613	9,387
Beaver	5,014	4,856
Piute	2,202	1,911
Wayne	2,394	2,205
Garfield	5,253	4,151
Kane	2,561	2,299
Duchesne	8,958	8,134
Daggett	564	364

Prior to the 1955 act, Rich, Morgan, and Summit Counties were joined with Wasatch and Daggett Counties to form one senatorial district. This is the home district of Senator Hopkin, one of the amicus curiae. Every county in this senatorial district lost population, not only between 1940 and 1950, but from 1930 to 1950. Was another county added to make up population for a new senatorial district? *NO*! Three counties, Rich, Morgan and Summit, were pulled out, although they had each lost population, and made a senatorial district by themselves.

Daggett County was added to Uintah to make a senatorial district.

Duchesne was joined with Wasatch, both of which lost population, to form a senatorial district. So we see that the northeast corner of the state which lost population received an increase of one senator.

Now as to the next counties that lost population; the number of senators from Juab, San Pete, Emery, Grand, Beaver and Millard was not changed, nor were the senatorial district.

The five counties left, which lost population, were, prior to 1955, in one senatorial district and had one senator among them. Another of the amicus curiae represented these counties in the last senate.

In spite of each of these counties losing population, they were divided into two senatorial districts and will now be represented by two senators. So we see the areas that lost population gained in senatorial representation.

Now let's look at the area that gained in population.

County	1940	1950	Senatorial representation under 1955 act
Boxelder	18,832	19,734	same
Carbon	18,459	24,901	same
Cache	29,797	33,536	same
Weber	56,714	83,319	same
Davis	15,784	30,867	same
Tooele	9,133	14,636	same
Salt Lake	211,623	274,895	lost one
Utah	57,382	81,912	same
Uintah	9,898	10,300*	

Thus, we see that every area that lost population either held the same or gained representation in the State Senate.

No area that gained in population gained representation in the State Senate with the exception of two islands, which will be discussed in a moment. All such areas either held the same or lost representation. This is truly reapportionment in reverse.

Uintah County, which had a slight increase in population, is surrounded by counties all of which lost population. In fact, the general area lost population, even including Uintah County in the area. This area picked up representation and Uintah County in proportion to its population picked up representation.

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*(This county is now joined to Daggett to form a senatorial district)

Iron and Washington Counties are also completely surrounded by counties that lost population. In fact counting them in the general area, the general area lost population, yet got increases in the number of senators. When senatorial districts were first formed Iron, Washington, Beaver and Kane formed a senatorial district. This remained so until 1921, when Kane County was removed from the district. In 1931 Beaver County was removed. Now they desire to separate the two counties into two senatorial districts, although together their population totals 19,478, only 478 more than the figure set for *one* senator. Why wasn't Uintah County also given one senator? Its population was greater than either Iron or Washington. The same is true of Tooele.

If we take the breakdown, as did the appellants in their brief, of Wasatch Front Counties as against other counties we find that Wasatch Front Counties had a population increase from 341,503 in 1940 to 471,003 in 1950, or an increase of 129,500 people. The non Wasatch Front Counties had an increase from 200,807 in 1940 to 217,859, or an increase of 17,052. Yet in spite of this, Wasatch Front Counties lost one senator. Non Wasatch Front Counties gained three. *Reapportionment in reverse!*

Taking Plaintiffs' (Appellants) Exhibits 4 and 19,000 as the basis of a senator, by comparing counties we find that each voter in Boxelder County represents approximately one vote.

Each voter in Cache County represents 0.57 of a

vote; in Rich, Morgan and Summit Counties represents 1.72 of a vote; in Weber County represents 0.45 of a vote; in Duchesne and Wasatch Counties represents 1.39 of a vote; in Salt Lake County represents 0.41 of a vote; in Utah County represents 0.46 of a vote; in Beaver and Millard Counties represents 1.33 of a vote; in San Pete County represents 1.37 of a vote; in Wayne, Piute, Garfield and Kane Counties represents 1.79 of a vote; in Iron County represents 1.98 of a vote; in Emery, Grand, and San Juan Counties represents 1.42 of a vote; in Juab, and Tooele Counties represents 0.92 of a vote; in Carbon County represents 0.76 of a vote; in Davis County represents 0.62 of a vote; in Uintah and Daggett Counties represents 1.78 of a vote; in Sevier County represents 1.57 of a vote; and in Washington County represents 1.93 of a vote.

Or stated differently, each person in Iron County carries the same weight in the State Senate as one and one-half people in Wasatch, Duchesne, San Pete, Beaver, Millard, Emery, Grand and San Juan; as one and one-third in Sevier; as two people in Boxelder, Juab and Tooele; as two and one-half people in Carbon; more than three people in Davis County; three and one-half people in Cache County; about four and one-half people in Utah and Weber Counties; and almost five people in Salt Lake County.

That is to say, compared with Iron County or Washington County, one person out of every four is disinfranchised in Sevier County; one out of three are disin-

franchised in Wasatch, Duchesne, Sanpete, Beaver, Millard, Emery, Grand and San Juan Counties; one out of two is disinfranchised in Box Elder, Juab and Tooele Counties; three out of five are disinfranchised in Carbon County; five out of seven disinfranchised in Cache County; seven out of nine are disinfranchised in Utah and Weber Counties, and four out of five in Salt Lake County.

As stated by the Supreme Court of Kentucky, in the case of *Stiglitz v. Schardien,* 239 Ky. 779, 40 S.W. 2d 315:

> "Equality of representation in the legislative bodies of the state is a right preservative of all other rights. The source of the laws that govern the daily lives of the people, the control of the public purse from which the money of the taxpayer is distributed, and the power to make and measure the levy of taxes, are so essential, all-inclusive, and vital that the consent of the governed ought to be obtained through representatives chosen at equal, free, and fair elections. If the principle of equality is denied, the spirit, purpose, and the very terms of the Constitution are emasculated. The failure to give a county or a district equal representation is not merely a matter of partisan strategy. It rises above any question of party, and reaches the very vitals of democracy itself."

There are many other cases coming to the same conclusion. Among the many are:

City of Lansing v. Hilliard, a Michigan case, 14 NW 2d 426;

Merrill v. Mitchell, a Mass. case, 153 N.E. 562;

Stevens v. Secretary of State, 181 Mich. 199, 148 NW 97;

Baird v. Kings County, 138 N.Y. 95, 38 NE 27;
State ex rel Attorney General v. Cunningham, 81 Wisc. 440, 51 NW 724.

The question of equality of representation may be summed up by quoting from *Ragland v. Anderson,* 125 Ky. 141, 100 SW 865 in which the court stated:

> "The equality of representation is a vital principle of Democracy. In proportion as this is denied or withheld, the Government becomes obligarchial or monarchial. Without equality republican institutions are impossible. Inequality of representation is the tyranny to which no people worthy of freedom will tamely submit. To say that a man in Spencer County shall have seven times as much influence in the government of the state as a man in Ohio, Butler or Edmonson, is to say that six men out of every seven in these counties are not represented in the government at all. They are required to submit to taxation without representation. It was this kind of oppression that inspired that great struggle for freedom which began at Lexington Green in 1775 and ended at Yorktown in 1781."

POINT III

THE 1931 REAPPORTIONMENT ACT IS MORE REASONABLE AND LESS OFFENSIVE THAN THE PRESENT (1955) ACT.

That this Court can not itself legislate nor force the legislature to enact a reapportionment statute will be conceded; but we deny the 1931 law, which would continue in effect if the present reapportionment act is set aside,

is either unconstitutional or more offensive than the present act. However, even if this were not so, the inequality of representation under a former act is both irrelevant and immaterial in considering the constitutionality of an apportionment act. 2 *ALR* 1343;. *Morris v. Wrightson* (1893) N. J. 28 Atl. 56; *State v. Cunningham*, Wis. 51 N.W. 224.

Reapportionment for Utah is long over due. Always involved is the temptation to resist equitable readjustment and to parade jealous local interests. A district finds it difficult to surrender that which it has enjoyed, but to which it is no longer entitled, due to population change.

Considering the great population growth of Utah during 1930 - 1950, it is submitted the 1931 act does less violence to representative government in Utah. The alternative suggested by appellants, return to the 1931 act if the present law is set aside, is not a serious objection.

The facts will support this statement (see Respondent's Exhibits 4 and 8).

In the 20 year period since 1930, Salt Lake County (the Sixth Senatorial District) increased population 41.62%, gaining 80,793. For its 194,102 inhabitants in 1931 Salt Lake County was entitled to seven of the Senate's twenty-three seats. Under the 1955 law, her population increased to 274,295 (1950 census) Salt Lake County loses one Senator while the total senate membership is increased to twenty-five!

Meanwhile, the Third District (Rich, Morgan, Summit, Wasatch and Daggett) with a total population of 19,984 in 1930 now only requires 10,937 for its senate seat in 1955. Wasatch and Daggett are dropped from the District. Rich, Morgan and Summit lose 9,047 inhabitants and keep one senator with an extra dividend of Wasatch and Daggett Counties to bolster up other rural minorities.

This alone is enough to render the act invalid. But there are other grave, unnecessary and unreasonable inequalities in the apportionment, so violative of our Constitution that it is the duty of this Court to so declare.

Tooele County under the present act has more than it needs for its own senator—14,436 population, an increase of 55% in the two decades. Yet Tooele remains saddled to Juab County, the latter losing 2,824 in the same period.

Eighteen Utah Counties have less than 10,000 inhabitants. (1950 Federal census) Thirteen Utah Counties have lost population since 1930. Nine Counties have under 5,000. Ten of the Eighteen Senatorial Districts under the 1955 Act have fewer than the 19,000 required. Salt Lake, Weber, Davis and Utah Counties, representing 68% of the State's entire population, have 44% of the senate membership.

Appellant's brief asserts, under the 1931 Act "the populous areas of the State would continue subject to rural domination of both Houses of the Legislature." Just the contrary is true if the above figures are correct.

For while senate membership is increased two, to twenty-five, all gains go to the rural counties, none of which have even the 19,000 necessary for one senate seat. These are: Iron, Washington, and Sevier. Each is unhooked from previous districting and awarded its own senator with 9,642, 9,836 and 12,072 inhabitants respectively. The total gains of these three counties together since 1930 is under 5,000.

The gross inequity of the 1955 Act was obvious to the District Court and clearly pointed up in Respondent's Exhibit No. 10. The population ratio to one senator increases under the 1955 act from a difference of 15,378 in 1931 (between the high and the low) to 36,174 in 1955. Stated simply; Salt Lake County requires 45,816 population for one senator in 1955, while Iron County requires only 9,642 under the new ratio. The disparity, as indicated by this Exhibit, between Salt Lake and Emery, Grand and San Juan (the high and low under the 1931 ratio) was 15,378. Clearly the 1931 Act is less offensive.

Nor does the proposed law correct the inequalities found in other populous urban senatorial districts:

Weber County, with a gain of 31,147 in the 20 year period, a 59.7% increase, still has the two Senators provided under the 1931 Act. Davis County, increased 16,-846, for 120.5%, with 30,867, still has only one Senator. Utah County shows an increase during the same period of 32,891, still has only two Senators.

The only actual advantage under the 1955 Act is the sub-districting within a district rather than "at large"

elections within Salt Lake, Weber and Utah Counties. While this may be a sounder method, the advantage can be obtained in a valid and constitutional re-apportionment law.

The consequence of this legislation is to disfranchise and dilute the political and constitutional rights of a substantial majority of Utah citizens. We contend the inequity is so unnecessary and incompatible with any reasonable effort to conform to the requirements of the Constitution, this Court has no alternative but to invalidate the act.

POINT IV

REQUEST FOR DIRECTIONS IF THE COURT FINDS THE ACT TO BE CONSTITUTIONAL.

Without in any manner detracting from our foregoing argument that Chap. 61, Laws of Utah, 1955, is unconstitutional for the reasons stated, if this court finds that said statute is constitutional, we ask that the court give instructions and guidance as to the number of senators to be elected in Salt Lake County in the general election of 1956 and the senatorial districts within said county in which they are to be elected. This being an action for a declaratory judgment, such request for direction is proper. If, of course, the court finds Chap. 61 as amended to be unconstitutional, as we believe this court will find, Salt Lake County will continue to elect her senators at large and four will be elected at the 1956 general election.

Sec. 36-1-4, as amended by Chap. 61, Laws of Utah, 1955, provides that in counties which are entitled to more than one senator, a bipartisan committee of voters shall divide the county into as many senatorial districts as it is entitled to senators. Salt Lake County under the 1955 amendment is entitled to six senators and hence that county will be divided into six senatorial districts. Sec. 36-1-1, as amended, contains the following proviso: "provided, that senators elected in the general election of 1954 and *1956* shall remain in office and represent the senatorial district within which they reside until the expiration of their respective terms of office." There were three senators elected in Salt Lake County in the general election of 1954, viz. Sens. Day, Davis and Lloyd. They were elected for four year terms. The intent of the proviso contained in 36-1-1 is that they shall remain in office, serving out their terms, but that after the creation of the senatorial districts in Salt Lake County, they shall represent the senatorial district within which they reside.

If in the creation of the six senatorial districts, each of these three holdover senators falls into a different district, presumably a senator would be elected in 1956 in the other three districts. The three holdovers, plus the three newly elected senators, would give Salt Lake County the six senators to which they are entitled under 36-1-1.

However, if in the creation of the six senatorial districts in Salt Lake County, it happens that two of the holdover senators are placed in the same senatorial dis-

trict, they both presumably will continue to serve out their respective terms, representing that senatorial district within which they reside. The other holdover senator would represent the district within which his residence happens to fall. This would leave four senatorial districts without representation. The question then arises: At the 1956 general election should a senator be elected in each of the four unrepresented districts? If so, this would mean that Salt Lake County would elect four new senators in 1956. These four new senators, plus the three holdovers, would give Salt Lake County seven senators in the next session of the Senate in 1957, although 36-1-1 provides that Salt Lake County shall have but six senators.

The problem will be more acute if it so happens that all three holdover senators fall into the same senatorial district. This would mean that all three holdovers would represent the same district, leaving the remaining five senatorial districts unrepresented unless a senator is elected in 1956 in each of those five districts. If five new senators were thus elected, Salt Lake County's membership in the 1957 session of the Senate would total eight, although 36-1-1 provides that Salt Lake County shall have but six senators.

If Salt Lake County is to be limited to six senators in the 1957 session, and two or more holdover senators fall into the same senatorial district, how then are the three new senators who would be elected in 1956 to be distributed over the four or five districts within which a

holdover senator does not reside? It is no answer to suggest that the holdovers would represent that district or those districts within which no holdover senator resides and in which no new senator is elected in 1956. 36-1-1 specifically provides in the proviso that the holdover shall remain in office *and represent the senatorial district within which he resides.* In view of that statutory language, it cannot be successfully urged that a holdover can represent any other district or part of the county other than the district within which his residence happens to fall.

It seems only basic in a democratic government such as ours that each of the six senatorial districts should be represented in the 1957 session of the Senate by either a holdover senator who resides within that district or by a new senator residing in that district who is elected in the general election of 1956.

Another problem is presented in that if two or more of the holdover senators fall into the same senatorial district, that district will be over-represented in the 1957 Senate. That district will enjoy representation by two or three senators while the other districts in the county will be represented by one senator or no senator if Salt Lake County is to be limited to six senators in that session of the Senate. This again does not accord with the fundamental principles of democratic government.

All of the foregoing argument demonstrates that Chap. 61 contains self-contradictions and is deficient in its direction as to the election of senators in the 1956

election. This court has heretofore struck down as unconstitutional legislation which is unintelligible and from which no definite legislative intent can be ascertained. *Toronto v. Sheffield,* 222 P. 2d 594.

Three other questions are also presented for this court's solution:

(1) How may the county re-districting committees sub-district their senatorial districts as near equal as possible, providing that representative districts shall not be divided in the formation of senatorial districts; and, how specifically can Salt Lake County, within this formula, so divide its 21 equal representative districts into 6 equal senatorial districts without dividing a representative district?

(2) How can sec. 36-1-1 which provides, senators elected in the general election of 1954 and *1956* shall remain in office, be reconciled with the fact that the act, if constitutional, will provide a different basis for electing senators in 1956. Perhaps an explanation to this self-contradiction is found in the fact that 36-1-1 was a companion bill to Senate Joint Resolution 1, both of which were intended to take effect on Jan. 1, 1957. The Legislature apparently recognized that Chap. 61 might be repugnant to Art. IX, Sec. 2 of the Constitution and hence provided for the proposed amendment to that section of the Constitution. It is interesting to note that Senators Hopkin and Woolley authored both the proposed constitutional amendment (S. J. R. 1) and the statute (Chap. 61). This argument must be valid since S. J. R. 1 would

not be voted upon by the people until the 1956 election, the same election at which the senators would be chosen under the old law (1931). The history of these two acts is clearly shown in the Senate and House Journals for 1955.

(3) This court is further asked whether or not Chap. 61, Laws of Utah 1955, constitutes an illegal delegation of authority to the county redistricting committees in contravention of Art. V, Sec. 1 and Art. VI, Sec. 1, Utah Constitution and whether or not that committee established by the act unreasonably classifies and limits the citizens of Utah who are ineligible to participate on said committee.

CONCLUSION

We respectfully submit that this court should affirm the decision of the district court below and find Chap. 61, Laws of Utah, 1955, invalid and unconstitutional in all respects.

Respectfully submitted,

J. LAMBERT GIBSON
RICHARD C. HOWE
A. W. SANDACK
Attorneys for Respondents